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INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
NONRULE POLICY DOCUMENT

Title: Guidance for Interpretation of the Term "Emission Data"
Identification Number: Air-031-NPD
Date Originally Effective:
Dates Revised: none
Other Policies Repealed or Amended: none
Brief Description of Subject Matter: Definition of the term "emission data" as used for purposes relating to the Clean Air Act and the Indiana Code.
Citations Affected: IC 13-14-11-1

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document (NPD) shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. This NPD will be made available to the public forty-five (45) days prior to presentation to the air pollution control board. Then, this NPD may be put into effect by IDEM thirty days after presentation to the air pollution control board, pursuant to IC 13-14-1-11.5. After such period, IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of notice, presentation to the board and publication.

PURPOSE

The purpose of this nonrule policy is to describe the policy that IDEM will use to define the term "emission data", as it relates to the trade secret exemption in public records found in Indiana Code 5-14-3-4 for purposes of permitting, data collection, modeling and compliance and related activities. According to the Clean Air Act, 42 USC Section 7414(c), "emission data" is excluded from the trade secret disclosure exemption to the public records requirements. Indiana has incorporated similar language into the statute for IDEM's public records at IC 13-14-11-1(b). IDEM's interpretation of "emission data", as it relates to data collection, permitting, modeling and compliance is set forth in this NPD.

BACKGROUND

The Clean Air Act, in section 114(c), specifically states that "emission data" are public records that are not eligible for the trade secret disclosure exemption. This exclusion states,

> Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which

the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets... (42 USC Section 7414(c) (CAA 114(c))).

In order to define the term "emission data", EPA promulgated 40 CFR 2.301(a)(2). It also issued a guidance document at 56 FR 7042 and further enacted part of that guidance in the Consolidated Emission Reporting Rule (CERR) found at 40 CFR 51.

Indiana has similar language to the Clean Air Act in its public records statute found at IC 13-14-11-1(b). Indiana does not, however, have an Indiana statute or rule that clearly defines "emission data", so IDEM has used EPA's guidance and interpretations in making "emission data" confidentiality determinations under 326 IAC 17.1.

IDEM has the authority to interpret rules and statutes through guidance documents under IC 13-14-1-11.5. Specifically, IDEM may use for guidance, "a policy or statement that:

(1) interprets, supplements, or implements a statute or rule;

(2) has not been adopted in compliance with IC 4-22-2;

(3) is not intended by the department to have the effect of law; and

(4) is not related solely to internal department organization."

This NPD interprets IC 13-14-11-1(b), has not been promulgated as a rule using IC 4-22-2, is not intended to have the effect of law and is not related solely to internal department organization and therefore falls into the policy requirements of IC 13-14-1-11.5.

POLICY

When required to apply or interpret the term "emission data", IDEM intends to use the following definition:

"Emission data", for purposes of IC 13-14-11, means any of the following:

(1) The identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any contaminant that:

(A) has been emitted from; or

(B) results from any emission by;

an emission unit authorized to emit under an applicable standard or limitation.

(2) The name, address, or other description of the location and the nature of the emission unit necessary to identify the emission unit, including a description of the device, equipment, or operation constituting the emission unit.

(3) Information necessary to:

(A) determine a permit condition that assures compliance with an applicable requirement; or

(B) determine or calculate an enforceable emission limitation, including:

(i) rate of operation;

(ii) rate of production;

(iii) rate of raw material usage;
(iv) material balance; or
(v) equipment capacity;

if the information is contained in a permit or the technical support document to ensure that the permit is practically enforceable under state or federal law.

IDEM will consider data and information meeting the above definition as "emission data" within the meaning of state and federal law which must be disclosed to the public upon request. This information is not eligible for the trade secret exclusion. This determination applies to data currently held by IDEM as well as information submitted in the future. This determination applies only to the data listed above. However, this NPD does not exclude permittees from submitting data marked as confidential, in accordance with 326 IAC 17.1, to IDEM as a trade secret. IDEM will then make a confidentiality determination based on this NPD. Determinations will continue to be made on a case-by-case basis for data not specified in this NPD.

POLICY INTERPRETATION AND EXAMPLES

IDEM uses "emission data" for a variety of regulatory purposes, including permits, emission statements, modeling and compliance activities. The following are several specific examples of "emission data" within those sections. The list is not all- inclusive and situations not addressed here will be evaluated on a case-by-case basis.

PERMITS

The permitting program uses "emission data" when determining applicable requirements for construction and operating permits. The following are examples of "emission data" in permits: applicability determinations for potential to emit, throughput information in 326 IAC 6-3, process flow diagrams and Best Achievable Control Technology (BACT) determinations.

Applicability of the permit program is based on a source's potential to emit. Potential to emit is generally determined using the maximum capacity of a unit. This information is "emission data" under paragraph (3) of the definition of "emission data" set forth above. However, actual maximum capacity is not needed if the permittee agrees to an enforceable limit on its potential to emit (PTE). An enforceable limit is created when the permittee stipulates that the permittee's capacity is greater than the highest relevant capacity for PTE purposes and over the PTE threshold. In these cases only the enforceable limit is needed to determine PTE and the actual maximum capacity would not be disclosed.

The process weight rate rule, found at 326 IAC 6-3, requires throughput information to calculate the correct particulate limit. This throughput information is "emission data" under paragraph (3) of the definition of "emission data" set forth above. However, if a permittee agrees to comply with an emission limit for 326 IAC 6-3 and stipulates that the capacity is above the corresponding process weight rate, then maximum throughput information would not be needed to determine the particulate limit and therefore would not be considered "emission data".

Process flow diagrams included in permit applications, at the request of IDEM, that contain "emission data" and are claimed as confidential because they graphically depict a manufacturing process that is itself confidential trade secret information, shall not be considered "emission data" under the definition of "emission data" set forth above, provided the "emission data" of interest on the process flow diagram appears elsewhere in the permit application.

When IDEM performs a BACT analysis pursuant to 326 IAC 2-2 and 326 IAC 8-1-6, information needed to determine that limit constitutes "emission data". This includes, but is not limited to, information that explains why control technology is or is not practical or cost- effective; and why a source is or is not comparable to other sources. Maximum capacity may be needed in these instances. The maximum capacity would be considered "emission data" under paragraph (3) of the definition of "emission data" set forth above. However, if this information is not needed to make a BACT determination, then it would not be considered "emission data".

In addition to the above examples, if information normally given to IDEM is not needed to make a permitting determination and the permittee does not wish to disclose that information, then the permittee should not submit it as part of their application or correspondence. The permittee is then assured that the information is kept confidential. IDEM will revise its permit application form instructions to be consistent with this NPD.

One further situation in the permitting context must be addressed. In the course of new source review, expected pollutant emission rates are "emission data". A source may apply for a permit to build a source that will emit a number of pollutants, some of which may not be subject to specific requirements under state or federal law. NOx is a good example of a pollutant that, for many types of emission units, is not regulated under state or federal law, so it would not be necessary to determine a permit condition or emission limit under paragraph (3). However, the public is entitled to know the expected emission rate prior to issuance of the new source review permit, even if some of the information used to arrive at that rate continues to qualify to treatment as a trade secret. Taking a limit in a permit will define a source's maximum capacity for most regulatory contexts, as described specifically below.

EMISSION STATEMENTS

Many air emitting source permittees are required to submit an emission statement on an annual basis according to 326 IAC 2-6. Much of the information submitted to IDEM in emission statements is considered "emission data". IDEM uses this information for a variety of planning and compliance purposes and makes it available to the public. IDEM also must report much of the emission statement information to EPA, pursuant to 40 CFR 51, the Consolidated Emission Reporting Rule (CERR).

A majority of the information requested, pursuant to 326 IAC 2-6, falls under paragraph (1) or (2) of the definition of "emission data" as set forth above. Some information submitted as part of the emission statement may be reserved, by IDEM, from public disclosure under the trade secret exemption under IC 5-14-3-4(a)(4) or IC 13-14-11-1. The CERR, at 40 CFR 51.15(d), states that "some States limit release of this type of data". However, pursuant to 40 CFR 51.15(d), EPA

considers all information supplied under the CERR to be "in the public domain and cannot be treated as confidential". EPA recognizes that state and federal confidentiality requirements may be different and a final reconciliation can be made prior to submission of confidential state information. It is IDEM's intent to treat any confidential trade secret information, which is not "emission data", reported pursuant to 326 IAC 2-6 as confidential.

The following is a list of emission statement information IDEM will consider "emission data". This determination is based primarily on requirements of 40 CFR 51, CERR (see Attachment A). It is important to note, that if a permittee takes an enforceable limit to avoid a permitting program or other regulation, then that enforceable limit is considered its maximum or design capacity for emission statement purposes, unless the unit emits other pollutants for which a maximum limit has not been set and the limit is not expressed in lbs/hour.

The following will be considered "emission data" under paragraph (1) of the definition of "emission data": heat content (fuel, annual average), ash content (fuel, annual average), sulfur content (fuel, annual average), pollutant code, activity/throughput (annual), activity/throughput (daily), work weekday emissions, annual emissions, emission factor, winter throughput (%), spring throughput (%), summer throughput (%), fall throughput (%), hours/day in operation, start time (hour), day/week in operation, weeks/year in operation, design capacity, primary control efficiency (%) and secondary control efficiency (%).

The following will be considered "emission data" under paragraph (2) of the definition of "emission data": facility ID code, Point ID code, process ID code, stack ID code, site name, physical address, 'x' stack coordinate (latitude), 'y' stack coordinate (longitude), stack height, stack diameter, exit gas temperature, exit gas velocity, exit gas flow rate, SIC/NAICS and control device type.

MODELING

The modeling program uses certain permitting and emission statement data to perform accurate modeling for air quality planning purposes. Therefore, much of their data is also "emission data". In addition to the "emission data" of emission statements and permitting, modeling uses the following information: property line boundaries and dimensions and location of the building next to the stack. These two provisions are considered "emission data" under paragraph (2) of the definition of "emission data" set forth above.

COMPLIANCE

I. Information Submitted to IDEM

Information on emissions submitted by or obtained from a source for the purpose of determining or assuring compliance with legal requirements constitutes "emission data". Limits or restrictions on emissions from sources are set forth in the permits, rules, statutes, and the state implementation plan (SIP). These limits can be in the form of limits on the rate of operation, rate of production, rate of raw material usage, material balance, operating practices, equipment capacity**,** or other formats. This information can be submitted as a requirement of a permit, rule, statute, SIP, or at the request of the Commissioner.

The most common compliance reports are the following:

- Continuous Emissions Monitoring System (CEMS) and Continuous Opacity Monitoring System (COMS) data
- Emission test reports
- Quarterly and monthly reports
- Deviation reports
- Emergency or Malfunction reports
- Annual Compliance Certifications

The information required by these reports is "emission data" under paragraph (1) of the definition of "emission data" set forth above.

Other documents that are typically submitted at the request of the Commissioner include copies of records retained by permittees, production or process information, material usage records, and other information used to determine compliance with applicable permit, rule, statute, or SIP requirements. The information required by these reports requested by the Commissioner is "emission data" under paragraph (1) of the definition of "emission data" set forth above. These documents include:

- Parametric monitoring records
- Visible emission observation records
- Sampling results
- Risk Management Plan

Some documents requested by the Commissioner may contain information that is "emission data", but may also contain some information that is eligible for the trade secret exemption. Examples of these documents that may contain information about emissions include:

- Source or facility maps
- Process flow diagrams
- Emission control diagrams
- Inspection and maintenance records
- Preventative Maintenance Plans
- Operation Maintenance and Monitoring Plans
- Start-up, Shutdown, and Malfunction Plans
- Compliance Response Plans

II. Other Compliance Related Information

In addition to documents submitted to IDEM, compliance can be determined by a number of methods including on-site inspections, surveillance, records reviews, file reviews, review of reporting, stack testing, and sampling. Whether obtained through a report prepared by the source or through one of these other mechanisms, the following information constitutes "emission data" under paragraph (1) of the definition of "emission data" set forth above:

Rate of operation - A source may limit its hours of operation or other rate of operation

through a permit. This limit can be used to keep a source out of a particular permit program by establishing an effectively enforceable operating permit limit. The limit can also be set to achieve a particular emission limit based on the rate of the operation and the emissions from that process. IDEM must be able to determine the actual hours of operation to determine compliance with the permit limit.

Rate of production - A source may limit its production through a permit. This limit can be used to keep a source out of a particular permit program by establishing an effectively enforceable operating permit limit. The limit can also be set to achieve a particular emission limit based on the rate of production and the emissions from that process. IDEM must be able to determine the total production to be able to determine compliance with the permit limit.

Rate of raw material usage - A source may limit the amount of raw material input or usage into a particular process through a permit. This limit can be used to keep a source out of a particular permit program by establishing an effectively enforceable operating permit limit. The limit can also be set to achieve a particular emission limit based on the rate of raw material usage and the emissions from that process. IDEM must be able to determine the raw material usage to be able to determine compliance with the permit limit.

Material balance - A source may limit the amount of emissions or material usage through a material balance limit of a particular process through a permit. This limit can be used to keep a source out of a particular permit program by establishing an effectively enforceable operating permit limit. The limit can also be set to achieve a particular emission limit based on a material balance of material usage and the emissions from that process. IDEM must be able to determine the material balance to be able to determine compliance with the permit limit.

Equipment capacity - Equipment capacity is needed to be able to demonstrate compliance with stack testing requirements in 326 IAC 3-6-3. Sources are required to test at 95% of the maximum capacity. A source may limit the actual maximum capacity through permit application review and the permittee must agree to an effectively enforceable limit on its maximum capacity. An enforceable limit is created when the permittee stipulates that the permittee's capacity is greater than the highest relevant capacity. The maximum capacity or the enforceable limit on maximum capacity must be included on stack test protocols.

Additionally, the following emission information constitutes "emission data" under paragraph (1) of the definition of "emission data" set forth above, if it is required to determine compliance with an applicable limit, rule or law:

Stack emission rates

Fuel usage
Air pollution control efficiencies and/or destruction efficiencies
Emission temperatures
Heat content of fuel
Ash content of fuel
Sulfur content
Annual emissions
Hours of operation
Flow rates
Grain loading
Volatile Organic Compound (VOC) contents of materials
Hazardous Air Pollutant (HAP) content of materials
Pressure drop across a control device or process
Surface tension
Throughput for purposes of the process weight rate rule.

A source's compliance with the permit requirements must be determined whenever an individual or company constructs or operates a source or facility. The need to obtain a permit is based on the source's potential to emit. Potential to emit is generally determined using the maximum capacity of a unit. IDEM recognizes that actual maximum capacity is not needed if the permit applicability is determined through a permit application review and the permittee agrees to an effectively enforceable limit on its potential to emit (PTE). However, when assessing permit applicability through a compliance review, the maximum capacity of a unit is needed and the information would be considered "emissions data" under paragraph (3)(A) of the definition of "emissions data" set forth above.

ADDITIONAL INFORMATION

Copies of this policy are available at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, Room N1001, 100 North Senate Avenue, Indianapolis, Indiana 46204.